

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION

DEWITT HUGHES and CHERANZETTA	)	
STAGGER-HUGHES,	)	
	)	
Plaintiffs,	)	No. 08 C 627
	)	
v.	)	Judge Dow
	)	
CITY OF CHICAGO, CHICAGO POLICE	)	Magistrate Judge Cox
OFFICER IZA, Star # 12957, and	)	
CHICAGO POLICE OFFICER UCZEN,	)	
Star # 6857,	)	
	)	
Defendants.	)	

**DEFENDANT CITY OF CHICAGO'S ANSWER, DEFENSES AND  
JURY DEMAND TO PLAINTIFFS' COMPLAINT**

Defendant City of Chicago (the "City"), by its attorney Mara S. Georges, Corporation  
Counsel of the City, answers plaintiffs' complaint as follows:

**Introduction**

1. This action is brought under 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiffs' rights as secured by the United States Constitution.

**ANSWER:** The City admits that plaintiffs purport to bring Counts I and II of their complaint under 42 U.S.C. § 1983 to redress the alleged deprivation under color of law of plaintiffs' rights as secured by the United States Constitution. The City denies the remaining allegations in this paragraph.

**Jurisdiction and Venue**

2. This Court has jurisdiction of the action under 28 U.S.C. §§ 1331 and 1367.

**ANSWER:** The City admits the allegations in this paragraph.

3. Venue is proper as Plaintiffs reside in this judicial district and Defendant City of Chicago is a municipal corporation located here. Further, the events giving rise to the claims asserted here all occurred within this district.

**ANSWER:** The City admits that it is a municipal corporation located in this judicial district and that venue is proper in that the alleged events giving rise to the claims asserted in plaintiffs' complaint occurred within this district. The City is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

#### **Background**

4. Plaintiff Dewitt Hughes is a licensed commercial truck driver. Plaintiff Cherannzetta Stagger-Hughes is a bus driver for the Chicago Transit Authority.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

5. On or about the evening of July 30, 2007, Mr. Hughes was driving Mrs. Stagger-Hughes' vehicle on Laramie Avenue just south of Fullerton Avenue. Mr. Hughes was obeying all traffic laws at all relevant times.

**ANSWER:** Upon information and belief, the City admits that, according to Chicago Police Department ("CPD") records, at approximately 10:45 p.m. on July 30, 2007, plaintiff Dewitt Hughes ("Hughes") was operating a motor vehicle in the vicinity of 2400 North Laramie in Chicago. The City is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

6. Before Mr. Hughes reached Grand Avenue an unmarked police car pulled over the vehicle. Two plain-clothed Chicago Police Officers, a male and a female ("Defendant Officers"), approached the vehicle. Mr. Hughes was immediately ordered out of the vehicle, handcuffed, and placed in the back of the Defendants' vehicle.

**ANSWER:** Upon information and belief, the City admits that, according to CPD records, at approximately 10:45 p.m. on July 30, 2007, Chicago Police Department Officers Debbie Iza, Star

No. 12957 ("Iza") and Mark Ucen, Star No. 6857 ("Ucen") conducted a traffic stop on the vehicle Hughes was operating. The City admits that, upon information and belief, Officer Iza is female and Officer Ucen is male. The City is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

7. As Mr. Hughes was led to the police vehicle by the Defendant Male Officer, the Defendant Female Officer searched Mrs. Stagger-Hughes' vehicle without cause and without Mr. Hughes' permission. In the process of searching the vehicle, the Defendant Officer found Biotin capsules, a vitamin sold over-the-counter, in Mrs. Stagger-Hughes' lunch bag.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

8. After the Defendant Officers searched the vehicle and found the vitamins, the vehicle was seized and impounded by the Chicago Police Department without cause or legal justification.

**ANSWER:** Upon information and belief, the City admits that, according to CPD records, after the traffic stop the vehicle Hughes had been operating was impounded by the City. The City is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

9. Mr. Hughes was arrested and transported to the Chicago Police Station at Grand Avenue and Central Avenue. Mr. Hughes was arrested without cause or explanation. Mr. Hughes was held at the police station for a period exceeding 24 hours.

**ANSWER:** Upon information and belief, the City admits that, according to CPD records, after the traffic stop Hughes was arrested and transported to the 25<sup>th</sup> District police station for processing. The City further admits that, according to CPD records, Hughes was held in the lock-up at the 25<sup>th</sup> District police station for more than 24 hours. The City is without knowledge

or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

10. On or about August 1, 2007, Mr. Hughes was transported to the Cook County Jail. After spending approximately two days in the Cook County Jail, Mr. Hughes was placed on house arrest until August 22, 2007. All of the charges against Mr. Hughes were dismissed in a manner indicative of innocence and Mrs. Stagger-Hughes' vehicle was released from the City's custody. As a result of the incident, Mr. Hughes spent approximately 22 days unlawfully detained.

**ANSWER:** Upon information and belief, the City admits that, according to CPD records, Hughes was transported to the Circuit Court of Cook County on August 1, 2007. The City further admits that, upon information and belief, on August 22, 2007, all charges against Hughes based on his arrest on July 30, 2007 were dismissed. The City is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

**Count I - 42 U.S.C. § 1983  
Unlawful Search & Seizure**

11. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

**ANSWER:** The City's answers to each of the foregoing paragraphs in the complaint are incorporated herein by reference as though fully set forth.

12. As described more fully above, Plaintiff Dewitt Hughes was searched and seized by the Defendant Officers in a manner which violated the Fourth Amendment.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

13. As described more fully above, Plaintiff Cherannzetta Stagger-Hughes' vehicle was searched and seized in a manner which violated the Fourth Amendment.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

14. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiffs' constitutional rights.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

15. The policy and practice of the City of Chicago were [sic] the moving force behind these constitutional violations in that:

- a. As a matter of both policy and practice, the City of Chicago directly encourages, and is thereby the moving force behind, the very type of misconduct at issue here by failing to adequately train, supervise and control its officers, such that its failure to do so manifests deliberate indifference;
- b. As a matter of both policy and practice, the City of Chicago facilitates the very type of misconduct at issue here by failing to adequately investigate, punish and discipline prior instances of similar misconduct, thereby leading its officers to believe their actions will never be scrutinized and, in that way, directly encouraging future abuses such as those affecting Plaintiffs;
- c. Generally, as a matter of widespread practice so prevalent as to comprise municipal policy, officers of the City of Chicago abuse citizens in a manner similar to that alleged by Plaintiffs on a frequent basis, yet the City of Chicago makes findings of wrongdoing in a disproportionately small number of cases;
- d. Even when there is sufficient evidence for probable cause to believe that officers committed crimes, the Chicago Police Department does not pursue criminal charges against the officers as it would against citizens who commit the same crimes;
- e. Municipal policy-makers are aware of (and condone and facilitate by their inaction) a "code of silence" in the Chicago Police Department, by which police officers fail to report misconduct committed by other officers, such as the misconduct at issue in this case; and

- f. The City of Chicago has knowledge of, and the relevant policy-makers have failed to act to remedy, the patterns of abuse described in the preceding sub-paragraphs, despite actual knowledge of the same, thereby tacitly approving and ratifying the type of misconduct alleged here.

**ANSWER:** The City denies the allegations in this paragraph, including all of its subparts.

16. As a result of the unjustified violation of Plaintiffs' rights by the Defendant Officers, as well as the City's policy and practice, Plaintiffs have suffered injury, as well as emotional distress.

**ANSWER:** The City denies that it has the policy and practice alleged in this paragraph. The City further denies that a City policy or practice resulted in any injury to plaintiffs. The City is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

17. The misconduct described in this Count was undertaken by the Defendant Officers within the scope of their employment and under color of law.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

**Count II - 42 U.S.C. § 1983  
False Arrest/Unlawful Detention**

18. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

**ANSWER:** The City's answers to each of the paragraphs in the complaint are incorporated herein by reference as though fully set forth.

19. As described more fully above, the Defendant Officers unlawfully detained Plaintiff Dewitt Hughes without cause or legal justification.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

20. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

21. The misconduct described in this Count was undertaken pursuant to the policy and practice of the Chicago Police Department in the manner described in preceding paragraphs.

**ANSWER:** The City denies the allegations in this paragraph.

22. As a result of the above-described wrongful infringement of their rights, Plaintiff Dewitt Hughes suffered damages, including but not limited to emotional distress and anguish.

**ANSWER:** The City denies that a City policy or practice resulted in any injury to plaintiffs. The City is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

23. The misconduct described in this Count was undertaken by the Defendant Officers within the scope of their employment and under color of law.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

**Count III - State Law Claim  
False Imprisonment**

24. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

**ANSWER:** The City's answers to each of the paragraphs in the complaint are incorporated herein by reference as though fully set forth.

25. Plaintiff Dewitt Hughes was detained despite the Defendant Officers' knowledge that there was no lawful justification for doing so.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

26. In the manner described more fully above, the Defendant Officers caused Mr. Hughes to be unlawfully and unreasonably imprisoned without justification.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

27. As a result of this misconduct, Mr. Hughes has suffered damages, including but not limited to emotional distress.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

28. The Defendant Officers' actions set forth above were undertaken intentionally, with malice and reckless indifference to Plaintiff's rights.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

29. The misconduct described in this Count was undertaken by the Defendant Officers within the scope of their employment such that their employer, City of Chicago, is liable for their actions.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

**Count IV - State Law Claim  
Malicious Prosecution**

30. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

**ANSWER:** The City's answers to each of the paragraphs in the complaint are incorporated herein by reference as though fully set forth.



31. Mr. Hughes was improperly subjected to judicial proceedings for which there was no probable cause. These judicial proceedings were instituted and maintained maliciously, resulting in injury, and all such proceedings were terminated in Plaintiff's favor in a manner indicative of innocence.

**ANSWER:** The City admits that, upon information and belief, on August 22, 2007, all charges against Hughes based on his arrest on July 30, 2007 were dismissed. The City is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

32. The Defendant Officers accused Mr. Hughes of criminal activity knowing those accusations to be without probable cause.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

33. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

34. As a result of this misconduct, Plaintiff has has [sic] suffered and continues to suffer injuries including pain and suffering as well as the loss of employment.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

**Count V - State Law Claim  
Respondeat Superior**

35. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

**ANSWER:** The City's answers to each of the paragraphs in this complaint are incorporated herein by reference as though fully set forth.

36. In committing the acts alleged in the preceding paragraphs, the Defendant Officers were members and agents of the Chicago Police Department acting at all relevant times within the scope of their employment.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

37. Defendant City of Chicago is liable as principal for all torts committed by its agents.

**ANSWER:** The City states that plaintiffs' allegation that the City "is liable as principal for all torts committed by its agents" is a vague, incomplete and/or incorrect statement of the nature of the City's liability under the doctrine of *respondeat superior* under Illinois law; therefore, this allegation is denied.

**COUNT VI - State Law Claim  
Indemnification**

38. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

**ANSWER:** The City's answers to each of the paragraphs in the complaint are incorporated herein by reference as though fully set forth.

39. Illinois law provides that public entities are directed to pay any tort judgment for compensatory damages for which employees are liable within the scope of their employment activities.

**ANSWER:** The City states that the allegations in this paragraph are a vague, incomplete and/or inaccurate statement of the City's liability under Illinois law; therefore, this allegation is denied.

40. The Defendant Officers are or were employees of the Chicago Police Department, who acted within the scope of their employment in committing the misconduct described herein.

**ANSWER:** The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

WHEREFORE, the City prays that this Court enter judgment in its favor and against plaintiffs on plaintiffs' complaint, award the City such costs and fees as allowed by law, and grant such further relief as this Court deems just and proper.

**JURY DEMAND**

The City requests a trial by jury.

**STATE LAW AFFIRMATIVE DEFENSES**

1. The Illinois Local Governmental and Governmental Employees Tort Immunity Act ("Tort Immunity Act") does not require the City to pay any tort judgment or settlement for any damages when its employee or agent was acting outside the scope of his or her employment. 745 ILCS 10/9-102 (2006).
2. The City is not liable to plaintiffs if its employees or agents are not liable to the plaintiffs. 745 ILCS 10/2-109 (2006).
3. To the extent any employee or agent of the City was acting within the scope of his or her employment, that employee or agent is not liable for his or her acts or omissions in the execution or enforcement of any law, unless such acts or omissions constitute willful and wanton conduct. 745 ILCS 10/2-202 (2006).
4. The City is not liable for any injury caused by the act or omission of another person. 745 ILCS 10/2-204 (2006).

5. Under the Tort Immunity Act, the City is not required to pay punitive or exemplary damages in any action brought directly or indirectly against it to the injured party or a third party. 745 ILCS 10/2-102 (2006).

6. As to plaintiffs' state law claims, the City is not liable to pay attorney's fees as "the law in Illinois clearly is that absent a statute or contractual agreement, attorney fees and the ordinary expenses and burdens of litigation are not allowable to the successful party." *See Kerns v. Engelke*, 76 Ill.2d 154, 166 (1979) (citations omitted).

#### **DEFENSES TO ALL CLAIMS**

7. To the extent that plaintiffs failed to mitigate any of their claimed injuries or damages, any verdict or judgment obtained by plaintiffs must be reduced by application of the principle that plaintiffs have a duty to mitigate, commensurate with the degree of failure to mitigate attributed to plaintiffs by the jury in this case.

8. To the extent any injuries or damages claimed by plaintiffs were proximately caused, in whole or in part, by the negligent, willful, wanton and/or other wrongful conduct on the part of plaintiffs, any verdict or judgment obtained by plaintiffs must be reduced by application of the principles of comparative fault, by an amount commensurate with the degree of fault attributed to plaintiffs by the jury in this case.

Date: April 2, 2008

Respectfully submitted,

MARA S. GEORGES  
Corporation Counsel of the City of Chicago

By: /s/ Kenneth Charles Robling  
KENNETH CHARLES ROBLING  
Assistant Corporation Counsel

30 North LaSalle Street, Suite 1020  
Chicago, IL 60602  
(312) 742-0116

CERTIFICATE OF SERVICE

I, Kenneth Charles Robling, an attorney, certify that on this 2<sup>nd</sup> day of April 2008, a true and correct copy of the foregoing **Defendant City of Chicago's Answer, Defenses and Jury Demand to Plaintiff's Complaint** was served via operation of the Court's electronic case filing system upon the following:

Arthur Loevy  
Jon Loevy  
Matthew Jenkins  
Michael Kanovitz  
LOEVY & LOEVY  
312 N. May Street, Suite 100  
Chicago, IL 60602

/s/ Kenneth Charles Robling  
Kenneth Charles Robling